

## **EXHIBIT B**

**Seltzer, Joanne**

**From:** Richard T. Seymour [rick@rickseymourlaw.net]  
**Sent:** Friday, July 20, 2007 2:23 PM  
**To:** Fonstein, Cliff H.; Seltzer, Joanne  
**Cc:** 'Rogin, Jonathan'; 'Adele Rapport'; 'Jullion R. Taylor'  
**Subject:** Graves: Response to Voice-Mail on Counting Days  
**Importance:** High

Joanne, I received your message about counting days for your Reply from the July 19 delivery of the paper copy of our Opposition. If defendant wants to move for an extra day to file its Reply on July 26, we will of course consent. Our understanding of the rules, however, is that the Reply is due on the 25th.

The paper copy did not contain anything that was different from the electronic copy served on July 18 through the court's ECF system, and that is the relevant service starting your time running.

Part 9 of the Court's "Procedures for Electronic Case Filing" states as follows:

**9. Service of Documents by Electronic Means**

Transmission of the Clerk's Notice of Electronic Filing of a document shall constitute service of such document upon any Filing User in that case. It remains the duty of the attorney for a party to review regularly the docket sheet of the case. Attorneys and pro se parties who are not Filing Users shall be served with a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules.

Since all counsel for defendant are on the ECF system, and since the paper copy did not contain anything that was different from the electronic copy served on July 18 through the court's ECF system, the ECF filing seems to us to be the service contemplated by the rules. There was no duty to provide a paper copy, and plaintiff did so to return the courtesy shown to us by providing us with a courtesy paper copy of your Motion. Mentioning it in the Certificate of Service does not seem to us to be capable of changing the rules.

If you have any authority to the contrary, we would of course be happy to look at it. If our understanding of the rules is correct, however, defendant would be taking a risk by filing on the 26th without leave of court.

As stated above, however, plaintiff will consent to an appropriate motion asking leave to file on the 26th. We would like to see a draft of the Motion and accompanying papers before such a motion is filed, and will get back to you as quickly as possible.

Rick

7/18/2008

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